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It is true that Mr. Taylor thinks that at a considerably earlier date than 1783 Pelatiah Webster entered upon the scene, not with a plan of government, but with a suggestion of a general convention for the framing of a new Constitution. In the Madison Papers, in a statement made apparently late in the life of James Madison, it is written:

"A resort to a general convention to remodel the Confederacy was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting and foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May, 1781, at the seat of Congress, Pelatiah Webster, an able though not conspicuous citizen, . . . remarks that 'the authority of Congress at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *continental convention*, for the express purpose of ascertaining, defining, enlarging, and limiting, the duties and powers of their Constitution.'"

Madison, it seems, afterwards struck out the words "an able."⁸ Mr. Taylor interprets Madison as saying that, among the early suggesters of a convention, the author of the pamphlet "was the first" (p. 27), and apparently knows nothing of the possible change in Madison's estimate of Pelatiah Webster. As to the pamphlet, Bancroft says:⁹

"Not by Pelatiah Webster, as stated by Madison. . . . First: at a later period, Webster collected his pamphlets in a volume, and this one is not among them; a disclaimer which, under the circumstances, is conclusive. Secondly: the style of this pamphlet of 1781 is totally unlike the style of those collected by Pelatiah Webster. My friend F. D. Stone of Philadelphia was good enough to communicate to me the bill for printing the pamphlet; it was made out against William Barton and paid by him. Further: Barton from time to time wrote pamphlets, of which, on a careful comparison, the style, language, and forms of expression are found to correspond to this pamphlet published in 1781. Without doubt it was written by William Barton."

Mr. Taylor does not reprint this pamphlet and does not quote Bancroft, but says (p. 27, n. 1):

"No attention should be paid to Bancroft's vain attempt to discredit Madison's statement. History of the Constitution, Vol. I, p. 24, n. 3. Apart from Madison's great accuracy and Bancroft's well-known inaccuracy stands the fact that the call of 1781 was a natural part of Pelatiah Webster's initiative as now understood. Madison was on the ground and knew the facts; Bancroft's inference is based on flimsy hearsay nearly a century after the event."

As Mr. Taylor's title page emphasizes his intention that this book be regarded as "an historical treatise," this review has been confined to describing Mr. Taylor's chief contention and to indicating that in this book Mr. Taylor has hardly succeeded fully in his attempt to convince readers of Pelatiah Webster's right to something like canonization. One thing is certain, namely, that when Alexander Hamilton framed the plan which he presented to the Federal Constitutional Convention in 1787; he personally had no need to go to Pelatiah Webster's pamphlet of 1783 for the ideas which Alexander Hamilton himself — acting principally, it may be, as a skilful transcriber of views widely prevalent — had reduced to writing in 1780.

THE INDIVIDUALIZATION OF PUNISHMENT. By Raymond Saleilles. With an introduction by Gabriel Tarde. Translated by Rachel Szold Jastrow. With an introduction by Roscoe Pound. Boston: Little, Brown and Company. 1911. pp. xlv, 322.

This book is the fourth of the foreign treatises in the modern Criminal Science Series now being translated into English and published under the auspices of the American Institute of Criminal Law and Criminology. It consists of a series of popular lectures delivered before the College of Social Science

⁷ Elliot's Debates, 1845 ed., Vol. V., p. 117.

⁸ Documentary History of the Constitution, 1900 ed., Vol. III, p. 796 g.

⁹ History of the Constitution, Vol. I, p. 24, n. 3.

at Paris in 1898. While the present translation is from the second edition in 1908, the text of the lectures remains substantially unchanged. As stated by the author, when beginning the preparation of the second edition, he

"decided to retain the chapters which had their initiative ten years ago, and to look upon them somewhat as an expression of the period, as reflecting a phase of legal thought; for therein lies their value. In themselves they may now have but slight value; as an historical document, they may still be of use."

As an exposition of the current thought of the time with respect to crime and its treatment, the present translation will be of much service to all interested in the scientific improvement of the criminal law. The value of the book is greatly enhanced by the suggestive introduction by Professor Pound, who points out that after all the movement for individualization in the criminal law is but a phase of the general movement for individualizing the application of all legal rules; that in the criminal law the aim should be to achieve what has been achieved in our courts of equity, a system of legal individualization.

The first chapter is devoted to a statement of the problem. This is followed by a history of punishment, which while rather general and cursory, is sufficient, considering the author's purpose. Then comes a review and criticism of the various schools of criminology; the classic school; the neo-classic school and individualization based upon responsibility; the Italian school and individualization based upon formidability. This review of the position of the various schools is illuminating, and in reasonably brief compass gives the reader a good general notion of the situation. Two chapters are devoted to the doctrine of responsibility, and responsibility and individualization, in which he discusses the position of the classic school and its doctrine of free will and the position of the Italian school and its theory of determinism, and then proposes a mediating view, namely: Responsibility as the basis of punishment and individualization as the criterion of its application.

"The conception of punishment implies responsibility. One must believe in responsibility in order that a measure taken against an offender shall be a punishment. But the application of punishment is no longer a matter of responsibility but of individualization. It is the crime that is punished; but it is the consideration of the individual that determines the kind of treatment appropriate to his case."

The remaining chapters are devoted to a system of legal, judicial, and administrative individualization based upon the mediating view thus announced. In the application of the penalty the latent and potential criminality as well as the criminality actually manifested by action should be considered. The treatment to be applied should be based upon a consideration of what the offender is, as well as upon a consideration of what he has done; thus requiring that the criminal law should seek to develop and strengthen moral character as well as regulate and punish conduct.

E. A. G.

CAPTURE IN WAR ON LAND AND SEA. By Hans Wehberg. Translated from *Das Beuterecht im Land- und Seekriege*. With an introduction by John M. Robertson. London: P. S. King and Son. 1911. pp. xxxv, 210.

The principle of naval warfare permitting a belligerent to seize an enemy's shipping, though privately owned, and this not to aid in carrying on the operations of war, but merely to enrich the captured state, has long been under attack. Dr. Wehberg has written in the present volume an exhaustive argument against this law of prize. Somewhat the larger portion of the work is given to exposition and analysis of the present law in regard to capture of both private and public property on land and on sea. One feels, however, that this is but introductory to the argumentative portion of the work.

The author says that the rule is anomalous, as private property is on land